IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 412 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

CHANDULAL CHHAGANLAL SORTHIA

Appearance:

1. Criminal Revision Application No. 412 of 2000

MR PV HATHI for Petitioner No. 1

MR BC DAVE for Respondent No. 1

MR B D Desai, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/03/2002

ORAL JUDGEMENT

The petitioner herein has preferred this revision application under section 397 read with section 401 of Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and acquittal order recorded by

the learned JMFC at Una in Junagadh district in criminal case no. 1363/87 acquitting respondent no.1 from the offence punishable under section 409 of IPC. The prosecution case against the said respondent before the trial court was that he was working as Talati-cum-Mantri of Delwada Gram Panchayat in Una Taluka in Junagadh district between 23.10.1986 to 18.9.1987. That during the aforesaid period, the respondent was paid an amount of Rs.10,000/- in his official capacity by the contractor on 23.10.1986. That the petitioner had issued appropriate printed receipt to the said contractor on 23.10.1986 for the said amount of Rs.10,000/-. That the said amount was taken in the day book. That the prior credit was Rs.9,896.15 and after crediting the amount of Rs.10,000/- the total amount on hand was Rs.19,896.15. That no expenditure was incurred on that day and, therefore, the closing balance on hand was the said amount.

2. However, it was noticed that the amount of Rs.10,000/- was not cash on hand but only Rs.9,896.15 was the cash on hand. It was, therefore, noticed that the petitioner had not credited the said amount of Rs.10,000/- received by him as aforesaid with the cash on hand and he retained the said amount with him. It was also alleged against him that the said amount was subsequently paid by him after a period of 10 months. Ultimately, it was found that there was a case of temporary misappropriation and, therefore, appropriate FIR was filed against the respondent.

3. After conclusion of the investigation, charge sheet was filed against the respondent. Charge was framed after the respondent was provided with copies of police investigation papers. The respondent pleaded not guilty and, therefore, evidence was recorded. After conclusion of the evidence, further statement of the respondent was recorded under section 313 of the Code. Arguments were heard and at the end of the trial, learned Magistrate found that the prosecution had failed to prove entrustment of the aforesaid amount of Rs.10,000/- to the respondent and consequently, the learned Magistrate, by his judgment and acquittal order dated 24.4.2000, acquitted the respondent from the aforesaid offence.

4. Feeling aggrieved by the said judgment and acquittal order of the trial court, the District Panchayat has preferred this revision before this Court. It has been mainly contended here in this revision that though there was evidence before the trial court to show

that the amount of Rs.10,000/- was paid to the respondent and the respondent, in turn, issued money receipt for the said amount of Rs.10,000/-, the trial court has overlooked the said evidence and has held that there was no evidence to show that the aforesaid amount of Rs.10,000/- was paid to the respondent by the contractor. That therefore, there is material illegality committed by the trial court in appreciation of evidence or in reading the evidence of the witness and, therefore, the acquittal order of the trial court is illegal and perverse and deserves to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the acquittal order against the respondent be set aside and the court should direct for retrial of the respondent for the offence punishable under section 409 of IPC.

5. On receipt of the revision, it was admitted and was fixed for final hearing. Accordingly, the revision has come up for final hearing. I have heard Mr P V Hathi, learned Advocate for the petitioner. I have also heard Mr B C Dave, learned Advocate for respondent No.1-original accused before the trial court. Mr B D Desai, learned APP appears for respondent State and supports the arguments advanced by Mr P V Hathi, learned Advocate for the petitioner. During the course of his argument, Mr P V Hathi, learned Advocate for the petitioner has argued that the evidence on record clearly discloses that the contractor had paid the amount of Rs.10,000/- to the first respondent and the first respondent had, in turn, issued receipt for the said amount to him. In support of the said argument, learned Advocate for the petitioner has take me through the evidence of the said contractor, Surabhi at Exh.38. He has deposed before the trial court that as per the terms and conditions of the contract he had paid an amount of Rs.10,000/- and respondent no.1 had issued receipt for the said amount to the said contractor. On the strength of the said evidence, learned Advocate for the petitioner has argued that there is evidence to show that the amount was paid to the first respondent by the contractor. At this stage, learned Advocates for the parties M/s. P V Hathi and B C Dave have contended that in case the matter is going to be remanded to the trial court for retrial, the court may not pass reasoned judgment and order. Mr B C Dave, learned Advocate has made this statement on instruction from his briefing Advocate of the trial court. It is also the argument that if reasons are assigned at present in the judgment of this court, then the trial court is likely to be influenced by the reasoning recorded by this court and it may adversely

affect the defence of the contesting respondent-original accused. It is, therefore, submitted by them that the reasoned judgment may not be recorded by this court in the matter. In the aforesaid view of the matter and in view of the aforesaid submissions advanced by the learned Advocates for the parties and considering the evidence on record, I am of the view that this is a fit case wherein this revision should be allowed and the retrial should be ordered by setting aside the judgment and acquittal order recorded by the trial court.

6. For the foregoing reasons and in view of the oral submissions of the learned Advocate for the petitioner as well as respondent no.1, this revision application is allowed, the judgment and acquittal order recorded by the trial court are set aside and the matter is ordered to be remanded to the trial court for retrial. The learned Magistrate shall hear and dispose of the case after full retrial thereof and will dispose of the same in accordance with law by giving reasonable opportunity to both the parties to lead evidence in the matter.

Rule is made absolute to the aforesaid extent. The trial court will not be influenced by the observations made hereinabove and by the order of retrial.

8.3.2002 [D P Buch, J.]
msp